> and **Skinner v. Geary**(4). (4) Notwithstanding an absence so protracted the authorities suggest that its effect may be averted if he couples and clothes his inward intention with some formal, outward, and visible sign of it; that is, instals in the premises some caretaker or representative, be it a relative or not, with the status of a licensee and with the function of preserving the premises for his own ultimate home-coming.

Another important passage in the judgment in *Brown v. Draper* cited above (at p. 315) is as follows :—

> The protection of the Acts, in our opinion, extends to protect a licensee of the tenant, not because the licensee can claim the protection of the Acts in his or her own right, but because the tenant is a necessary party to the proceedings, and no order can be made against his licensee in his absence.

Mr. Pooley, for the Plaintiffs, sought to distinguish our Control of Rent Ordinance from the English Acts on these points largely because of the special provision our Ordinance contains to give protection to the family of the tenant.

Section 13(1) of the Ordinance enacts that :—

> No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely:
>
> (The Ordinance then enumerates a number of cases (a) to (m) including (i), which reads:—)
>
> (i) where the tenant **or any member of his family** is not in occupation of the premises or any part thereof.

From the Definition in Section 2 of the Ordinance "member of his family" does not include "sister."

Mr. Pooley argued that by that sub-section (Section 13(1)(i)) a definite class of licensees has been given protection by the Ordinance and that the English cases cited above do not apply because there is no similar section in the English Acts. He went on to urge that other licensees were thereby excluded when considering what "possession" meant under Sections 15 and 16 of the Ordinance. I do not think his argument is sound. If it were, it would have the result, for example, of removing the protection of the Ordinance from a tenant who went away and left for even a reasonable time an agent or licensee not included in the definition of "member of his family" to look after and occupy his house during his absence. Once it has been conceded that possession can be retained on behalf of the tenant by his agent or licensee for a reasonable time, then the general principles outlined in the English cases cited above are applicable. It is to be observed, too, that Section 13(1) of the Ordinance merely sets out cases where judgment for the recovery of possession may be given; it does not purport to decide what amounts to possession by the tenant under Sections 15 and 16. It does not, in my opinion, introduce a new principle as to the determination of what possession by the tenant through an agent or licensee means.

It should also be observed that Sections 15 and 16 of our Ordinance contain provisions of a nature very similar to those contained in Section 15 of the English Increase of Rent and Mortgage Interest (Restriction) Act, 1920, and in the 2 English cases cited above the Courts must, I think, be deemed to have had the provisions of that Section in mind.

Hence I come to the conclusion that Miss Sledge is a statutory tenant because she is still "in possession" of the premises through her agent or licensee (the Defendant). That being the case the Defendant is not a trespasser and to obtain possession the Plaintiffs must make the tenant Miss Sledge a party as was held in *Brown v. Draper* cited above, where in similar circumstances the Court held categorically that the tenant was a necessary party to the proceedings.

Mr. Pooley then said that if the Court held that the tenant was a necessary party he applied to join the tenant Miss Sledge as a defendant in this action under Order 16 rule 11.

I do not think that that should be done because, if (as I have held) Miss Sledge is still the tenant (i.e. a statutory tenant), she is entitled to the protection given to statutory tenants by the Control of Rent Ordinance, 1948. That being so it would appear to be necessary for the Plaintiffs to obtain the permission of the Rent Board before applying to the Court for an order for possession.

For the reasons given above I hold that the Defendant is not a trespasser and that this action against her fails.

The Defendant was given leave to defend *in forma pauperis* and the Plaintiffs must pay such costs as she is entitled to under Order 16 rule 25(1).

I therefore give judgment for the Defendant with costs to be taxed under the above rule.

Judgment for Defendant.

CHAN SIN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J., Callow, J. and Spenser-Wilkinson, J.) January 13, 1949]

[F.M. — Criminal Appeal No. 156 of 1948]

Emergency Regulations, Regulation 4(1)(a) — Carrying component parts of a sten gun — Evidence of identification parade — Conviction set aside as

conduct of identification parade was irregular, improper and unfair to accused.

This was an appeal from the conviction of the appellant on a charge under Regulation 4(1)(a) of the Emergency Regulations. The facts were that on information received that a Chinese had a sten gun a police party raided a kampong, where a detective and a police constable saw an old man, who was a Chinese, carrying a Sten gun. Subsequently the appellant was arrested. An identification parade was held consisting of 8 persons — 1 Sikh, 3 Malays, a Chinese woman, 2 other Chinese and the appellant. Both the detective and the Police constable picked out the appellant. One of the grounds of appeal was that the identification of the appellant was unsatisfactory.

Held, that in this case the way the Police conducted the identification parade was highly irregular, improper and definitely unfair to the appellant, and therefore, the evidence of identification being unsatisfactory, the conviction must be quashed.

Cases referred to :—

(1) *R. v. Dickman* 5 Cr. App. Rep. 135 at p. 143.

(2) *R. v. Chapman* 7 Cr. App. Rep. 53 at p. 56.

CRIMINAL APPEAL.

E. E. C. Thuraisingham for the Appellant.

A. M. I. Austin (D. P. P.) for the Respondent.

Willan, C. J. :— In this case the appellant was charged with carrying component parts of a sten-gun at Kampong Berumin, Tapah, on the 9th of August, 1948, an offence contrary to Regulation 4(1) (a) of the Emergency Regulations, 1948.

At the close of the trial the first Assessor, not being satisfied with the identification, found the appellant not guilty, but the second Assessor found the appellant guilty. The learned trial Judge agreed with the second Assessor and, having convicted the appellant under Regulation 4(1) (a), sentenced him to death.

The facts are that a police informer gave information to the police that he had seen the appellant holding a Sten-gun outside his, the appellant's, house on the 8th August, 1948. He told the police that he had been watching this place for 4 days; that he had seen the appellant on all those 4 days; and that he knew the appellant well by sight. Therefore this informer could be in no doubt that the appellant was a Chinese. We emphasise this now, and its importance will be seen later. This informer gave his information to Police Inspector Raja Adnan (hereinafter in this judgment referred to as "The Police Inspector") who led the police raid on Kampong Berumin the next day i.e. the 9th August, 1948. His party consisted of DPC. 132, PC. 3950 and other police. On arrival at Kampong Berumin DPC. 132 and PC. 3950 went ahead as scouts, and as they approached some huts they were fired on. Here it is necessary to examine the evidence of each of them separately and in some detail.

DPC. 132 said that when he was about 30 yards away from the last hut the police were fired on. The door of that hut faced him. He saw that door open and seven or eight Chinese came out. They ran into the jungle behind the hut. Amongst those seven or eight Chinese there was one old man, who came out first, and who was carrying a Sten-gun. He had never seen this old man previously. We would here point out that from the evidence of the prosecution it was established that there was another old man amongst the Chinese who lived in the place raided.

In the subsequent police investigation the Police Inspector recorded the statement of DPC. 132. The remarkable feature of that statement is that although DPC. 132, if his evidence is to be believed, knew the old man he had seen emerge from the hut carrying a Sten-gun was a Chinese he never disclosed this to the Police Inspector. This is more remarkable because the learned trial Judge describes the appellant as having a small imperial grey beard, a small grey moustache and rather a striking face. It is not as if DPC. 132 was a raw Police recruit — he has been 3 years in the Force.

The evidence of PC. 3950, similar to that of DPC. 132, is that when he was about 30 yards from the hut he saw an old man, who was a Chinese, emerge from the hut carrying a Sten-gun. Here again, in the subsequent police investigation he did not tell the Police Inspector that this old man was a Chinese with the features just mentioned.

We can only regard this failure of both DPC. 132 and PC. 3950 to disclose to the Police Inspector the nationality and description of this old man as highly unsatisfactory, particularly in a case in which they are the only witnesses who can speak to identification and on whose evidence the appellant was convicted.

The appellant was arrested at Temoh on 14th August, 1948, by the Police Inspector. Here again, the evidence of arrest is very unsatisfactory. The Police Inspector said that when he arrested the appellant DPC. 132 was not present. DPC. 132, in his evidence, first of all said he was present when the appellant was arrested and later changed that evidence and said he was not present. The appellant, who gave evidence on oath, said that this DPC was present when he was arrested. This is important in view of the police identification parade which took place on the 15th August, 1948, when both DPC. 132 and PC. 3950 were called before the parade to identify the appellant.

A further very unsatisfactory feature of this case is the way in which the parade was held. Hardly any of the necessary and usual precautions were taken. According to the Police Inspector that parade consisted of 8 persons — 1 Sikh, 3 Malays, 1 Chinese woman and 3 other Chinese including the appellant. The explanation given by the Police Inspector as to why he included in that parade persons other than Chinese and also why he included a Chinese woman therein cannot be regarded in any sense as satisfactory.

With regard to the inclusion of persons other than Chinese, he said that he could not gather from DPC. 132 or PC. 3950 whether the old man was a Chinese, Punjabi or a Malay. We are unable to follow these explanations. With regard to the inclusion of the Chinese woman he stated he thought the old man might be a woman because in the raid on the 9th of August, 1948, the police, in returning the fire, had killed a woman. We are unable to follow these explanations because the Police Inspector himself had arrested the appellant, who was the suspected person, on the previous day. Hence he knew from that and also from the information given to him earlier by the informer that the suspected person was a male Chinese. He also knew that the appellant was an old man — his age is given as 58 years — and yet on that Parade there were only 3 Chinese males, including the appellant, and the other two male Chinese were much younger than the appellant, one being 16 years younger and the other 10 years younger.

Mr. Thuraisingham, for the appellant, attacked the conviction on two main grounds :—

(1) That the identification of the appellant was most unsatisfactory.

(2) That the prosecution had failed to prove that the appellant was carrying component parts of a Sten-gun.

With regard to his first contention we have already commented on the unsatisfactory method of conducting the Identification Parade. Ignoring the disparity in the ages of the two male Chinese and the appellant, the chances of the appellant being identified on that Parade by DPC. 132 and PC. 3950 were reduced to 1 in 3, and bearing in mind that both DPC. 132 and PC. 3950 were looking for an old man on that Parade, the chances of the appellant not being picked out by them were reduced almost to nil. In short, the unsatisfactory way in which the parade was conducted made it a practical certainty that both DPC. 132 and PC. 3950 would pick out the appellant.

As stated in *R. v. Dickman*[1] :—

> The police ought not, either directly or indirectly, do anything which might prevent the identification being absolutely independent, and they should be most scrupulous in seeing that it is so.

Further, in *R. v. Chapman*[2] the Lord Chief Justice said :—

> The usual and proper way in such cases is to place the suspected man with a sufficient number of others, and to have the identifying person pick out a man without assistance.

We consider the way the police conducted this Identification Parade to have been highly irregular, improper and definitely unfair to the appellant. We also consider that the explanation given by the Police Inspector for the method adopted by him in so conducting this Parade was unsatisfactory, because we have no doubt that when he formed up the Parade he knew the suspected man was a Chinese male — the appellant — and hoped that he would be identified by both DPC. 132 and PC. 3950.

We would further point out that in this country it has always been the practice in Police Identification Parades that all the persons on the Parade should be of the same nationality as that of the suspected person, as far as possible they should be from the same station in life as that of the suspected person; and also there should be no great disparity of ages in the persons on the Parade.

We agree with Mr. Thuraisingham that from the way in which this Parade was conducted, its evidentiary value is worthless.

Mr. Austin, Federal Counsel, admitted that the Parade had not been conducted as it should have been, and invited us to ignore it and uphold the conviction on the evidence of identification by both DPC. 132 and PC. 3950 at the time of the raid made on the 9th August, 1948. We are unable to accede to this because since both these police officers had identified the appellant on that Parade they were bound to give evidence at the trial that the appellant, who was the accused person in the dock, was the old man they saw on the raid carrying a Sten-gun. Further, their evidence as regards identifying the appellant on the raid is unsatisfactory because, as we have stated earlier, they did not inform the Police Inspector at the police investigation that the old man they had seen had a small grey imperial beard and a small grey moustache. This is important because, as stated earlier in this judgment, the prosecution themselves proved that there were two old men amongst the inhabitants of the place raided.

For these reasons we agree with the Assessor at the trial who gave his opinion that he was not satisfied as regards the evidence of identification, and we allow this appeal and quash the conviction and sentence.

In the view we have taken it is unnecessary for us to consider the second submission made by Mr. Thuraisingham that the prosecution had failed to prove that the appellant was carrying component parts of a Sten-gun.

Appeal Allowed.

CHONG KIM SENG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J., Callow, J. and Spenser-Wilkinson, J.) February 8, 1949]

[F.M. — Criminal Appeal No. 5 of 1949]

Emergency Regulations 1948, Regulation 3 — Possession of revolver — Possession of ammunition — Charges — Admissibility of Evidence — Evidence Enactment Ss. 3 and 7 — Courts Ordinance 1948, S. 29(1).

The evidence in this case showed that appellant was found standing at the entrance to a house in a clearing in the jungle carrying a small cloth bag. In the bag were found 28 rounds of revolver ammunition and one round of .303 ammunition. Inside the house were found a revolver, 6 rounds of revolver ammunition and a hand-grenade. When the Police raided the house another person was seen to run away from it. At the trial two charges were framed against the appellant, firstly, for possession of the revolver and secondly, for possession of 34 rounds of .32 revolver ammunition, 1 round of .303 ammunition and a hand grenade. After the assessors had been chosen, the learned trial Judge decided that the two charges should not be tried at one trial and the prosecution elected to proceed on the second charge only. At the trial the prosecution led evidence as to the ammunition found in the bag and in the house and also as to the revolver, which was put in as an exhibit at the trial. One of the grounds of appeal was that the evidence regarding the revolver was wrongly admitted in evidence.

Held, (1) that evidence regarding the revolver was inadmissible and should have been excluded; (2) that the prosecution should have framed separate charges relating (i) to the revolver (ii) to the 6 rounds of ammunition and the hand-grenade found on the table and (iii) to the 28 rounds of revolver ammunition and the one round of .303 rifle ammunition found in the bag; (3) that because of the wrongful admission of evidence and of the presence of other unsatisfactory features of the trial, the conviction must be quashed; (4) that in a charge of possession of ammunition, it is not necessary for the prosecution to prove that the ammunition is serviceable.

Cases referred to:—

(1) *R. v. Peckham* 25 C.A.R. 125.

(2) *Tai Chai Keh v. Public Prosecutor* (1949) M.L.J. 68.

CRIMINAL APPEAL.

C. Mills for the Appellant.

Austin (Federal Counsel) for the Respondent.

The judgment of the Court of Appeal was delivered by:—

Willan, C. J. : — In this case the prosecution filed two charges against the appellant, first being in possession of a .32 Colt revolver, and secondly with being in possession of 34 rounds of .32 revolver ammunition, 1 round of .303 rifle ammunition and a hand-grenade.

After the two Assessors had been chosen the trial Judge decided it was undesirable that the two charges should be tried together at one trial, and thereupon the prosecution elected to proceed on the second charge only — i.e. the charge relating to the ammunition and the hand-grenade.

The appellant, on being called upon to plead to that charge, claimed trial.

The sequence of events at the opening of the trial is not in accordance with the provisions of section 186 of the Criminal Procedure Code, which lays down that the plea of an accused person must be taken before the Assessors are chosen. The reason for this, of course, is that if an accused person pleads guilty and his plea is accepted, there is no need to proceed to choose any Assessors.

The evidence against the appellant on the second charge was that he was found standing at the entrance to a house in a clearing in the jungle carrying a small cloth bag. In that bag were found 28 rounds of revolver ammunition and one round of .303 ammunition. Inside the house, lying on a table, were found a revolver (the subject matter of the first charge not proceeded with at the trial), 6 rounds of revolver ammunition and a hand-grenade. These 6 rounds of ammunition and the hand-grenade found on the table were lumped together with the ammunition found on the appellant in the cloth bag and form the total of the articles incorporated in the second charge.

Both Assessors found the appellant guilty on the second charge. The learned trial Judge agreed with them and, having recorded a conviction, sentenced the appellant to death. Therefore the appellant stands convicted of being in possession of 34 rounds of revolver ammunition, one round of .303 rifle ammunition and a hand-grenade.

A significant fact, *proved by the prosecution,* in relation to the revolver, the 6 rounds of ammunition and the hand-grenade found on the table is that, when the police raided the house, another person was seen to run away from it and he was not arrested. This is important because it raises the question as to whether the evidence at the trial proved beyond reasonable doubt that the appellant was in exclusive possession of those 6 rounds of ammunition and the hand-grenade.